

**HB 5959 and HB 5804
December 3, 2014**

Statement of Mark Bernstein to Hon. Frank Foster, Chair, Commerce Committee

This statement is offered in support of HB 5804 OR HB 5959 if it is amended to include “gender identity” or “gender expression,” to amend the Elliott Larsen Civil Rights Act (ELCRA).

I offer this statement as a practicing attorney for almost twenty years. I hold a BA, J.D., and MBA from the University of Michigan. I was a Commissioner on the Michigan Civil Rights Commission for many years and served as chair of the Commission. My law firm, The Sam Bernstein Law Firm, PLLC, is a proud member of the Michigan Competitive Workforce Coalition, a group of businesses and business leaders who are calling on the state legislature to amend ELCRA.

The ELCRA makes it illegal to discriminate based on religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. Research shows that 75% of Michigan residents support updating ELCRA to protect LGBT people. Many communities across Michigan have taken measures to update their civil rights ordinances to include sexual orientation, gender identity and gender expression protections. Across the country, of the 21 states that have non-discrimination laws in place, 17 include both sexual orientation and gender identity protections.

I oppose the omission of ‘gender identity’ from any bill. Some have suggested that transgender individuals don’t need state protection from discrimination because federal legal rulings provide adequate protection. Assuming you support this reasoning, then codifying this language in ELCRA would be harmless. More concerning, is that these federal rulings are far from decisive; the courts will take years to come to agreement. Further, the few rulings that are favorable only apply to employers with more than 15 staff, and provide no protections for discrimination in housing or public accommodations – the areas in which discrimination of transgender individuals is most impactful and prevalent.

Most employers don’t need a law to do the right thing and treat their employees fairly. However, when that kind of good judgment breaks down, we need to have laws in place that protect people and ensure that good employees are judged by their job performance—nothing more, nothing less. Approximately 80% of transgender people report experiencing widespread discrimination in the workplace. This is tragic. Modernizing ELCRA to protect this community would make clear that no hardworking American, including those who are gay or transgender, should have to live in fear that they can be fired for reasons that have nothing to do with their job performance.